

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Calling Party Pays Service Offering  
in the Commercial Mobile Radio  
Services

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WT Docket No. 97-207

SEP 17 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.**

**LEAP WIRELESS INTERNATIONAL, INC.**

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**September 17, 1999**

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**COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.**

Leap Wireless International, Inc. and its wholly-owned subsidiary, Cricket Holdings, Inc. (collectively, "Leap"), hereby offers the following comments in connection with the above-captioned Notice of Proposed Rulemaking ("Notice").

**I. INTRODUCTION**

Leap, through its wholly-owned subsidiary Cricket, is a new entrant in the Commercial Mobile Radio Services ("CMRS") marketplace, and will shortly begin building out and deploying its wireless service in a number of U.S. markets.<sup>1</sup> Cricket will provide a high-quality, low-cost wireless telephony service targeted at the local mass consumer market. Unlike the per-minute service plans of most traditional wireless carriers, the Cricket service model

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<sup>1</sup> See In re Applications of AirGate Wireless, L.L.C., Assignor, and Cricket Holdings, Inc., Assignee, For Consent to Assign Broadband PCS F Block Licenses KNLF882, KNLG279, KNLG280 and KNLG281 And Application of Leap Wireless International, Inc. For Authorization to Construct and Operate 36 Broadband PCS C Block Licenses, *Memorandum Opinion and Order*, FCC File Nos. 0000002035, 0000012974 (rel. July 22, 1999) (consenting to the assignment of 4 F-Block PCS licenses to Cricket and 36 C-Block licenses to Leap).

offers unlimited local calling for a flat monthly fee, much like standard residential wireline service plans.

Leap applauds the Commission's initiative in taking steps to increase the availability and penetration of CMRS services across the United States. Leap questions the necessity for any further regulatory intervention in the CMRS marketplace to promote the emergence of Calling Party Pays ("CPP") service, however. Wireless competition is flourishing, with multiple carriers in many markets deploying new service models and pricing plans every day; CPP simply is not needed to provide additional stimulus to wireless usage or competition.

Indeed, a central question at issue in this proceeding is whether the consumer will benefit at all if CPP is introduced. Leap believes that, from the U.S. consumer's perspective, a wireless service model that offers the prospect of true local competition will not be premised on whether it is the called or calling party that is forced to bear the cost of completing a wireless telephone call. Wireless local competition will instead arise from a model where, from the user's perspective, *no one* pays, much like using a landline phone for local calls. Thus, at a minimum, the Commission must tread very carefully, and should not take action that inadvertently stifles wireless service innovation or competition, for example, in the form of flat-rated service offerings such as Cricket.

Finally, Leap is very concerned about the effect that CPP will have on smaller carriers. Given the Commission's proposed implementation of CPP as a voluntary service, it is likely that CPP implementation costs, including complicated notification costs and confusion, upgrades to network architecture and billing costs, will disproportionately affect and harm new entrants that otherwise will continue to innovate and compete with entrenched landline and

wireless incumbents. Once again, Leap believes that any purported benefits to CPP could well be outweighed by such costs.

## **II. GIVEN THE VIBRANT STATE OF WIRELESS COMPETITION, THE NEED FOR FURTHER REGULATORY ACTION TO PROMOTE CPP IS DOUBTFUL**

### **A. The Wireless Marketplace Is More Competitive Than Ever**

Wireless penetration and competition today is strong, and continues to increase. 69.2 million Americans—twenty six percent of the country’s population—currently subscribe to wireless telephony.<sup>2</sup> Subscriber numbers have risen dramatically in recent years, by a factor of 25 percent in 1998 alone.<sup>3</sup> At the same time, the average monthly wireless telephone bill has continued to decline as multiple providers compete for subscribers: There are at least five operators in each of the 35 largest Basic Trading Areas (“BTAs”) in the United States, and at least three operators in 97 of the top 100 BTAs.<sup>4</sup>

### **B. CPP Is A Concept Whose Time Has Come And Gone**

With wireless competition at an all-time high, operators have struggled to gain customers by providing innovative service plans. With these service plans, the market has addressed the concern underlying this proceeding: how best to increase wireless penetration by giving consumers what they want: inexpensive, and above all, predictable service. Recently, digital-one-rate “bucket plans” with large amounts of included airtime have become extremely popular.<sup>5</sup> Some carriers also are experimenting with wireless plans that offer unlimited local

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<sup>2</sup> *In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Fourth Report* (June 24, 1999) (“*Fourth CMRS Report*”) at 6.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.* at 9, 6.

<sup>5</sup> *Id.* at 11-12.

calling – Cricket’s flat-rated local calling plan epitomizes this service model.<sup>6</sup> In short, wireless carriers today are in the process of meeting consumer demand for inexpensive and predictable CMRS charges by offering a variety of targeted service plans.

As a result, there is little need for regulatory intervention by the Commission. As one industry participant has stated: “There are a lot of opportunities for wireless carriers to provide services to customers that we are all pursuing. CPP is just another one. . . The marketplace has already spoken. In the United States, CPP is not on top of people’s agendas.”<sup>7</sup> Lower prices and inclusive service plans now allow consumers to give out their wireless telephone numbers and leave their handsets on; they no longer must avoid at all costs unwanted incoming calls. Says another industry analyst: “CPP is an idea whose time came five years ago . . . . The market has moved on.”<sup>8</sup>

**C. CPP Implementation Is Much Different, And More Complex, in the U.S. Marketplace**

Proponents sometimes cite the “impressive record of success” enjoyed by CPP in Europe and Latin America.<sup>9</sup> Yet the market for telephony in the United States is fundamentally different than the market elsewhere.

First, Europeans and Latin Americans are accustomed to paying per-minute charges whenever they make a phone call, whether to mobile or fixed handsets. In the United

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<sup>6</sup> *Id.* at 13-14.

<sup>7</sup> C. A. Olson, “CPP Lost Appeal,” *Wireless Review* (August 1, 1999) at 18 (quoting Ira Gorelick, GTE).

<sup>8</sup> *Id.* at 16 (quoting Mark Lowenstein, Yankee Group).

<sup>9</sup> “Wireless Watch,” *Wireless World* (November 30, 1997) (quoting Jay Kitchen, PCIA). *See also Notice* at ¶ 24 (citing success in Argentina).

States, where "metered" telephone service is not the norm, consumers want and expect unlimited local calling—regardless of whether the call is to a wireless handset or land line. American consumers are disinclined to pay for calls to someone else's wireless phone, or to ask other people to pay for calls to their own. Thus, when GTE test marketed CPP in Hawaii, for example, it found that, "the marketplace was just not comfortable with [CPP] as opposed to other places in the world where metered billing is the norm."<sup>10</sup> In its two years of Hawaiian test marketing, BellSouth signed up a grand total of sixty customers.<sup>11</sup> In Europe and Latin America, consumers accept calling-party metered billing. But in the United States, consumers demand that local calls be free.

Second, no other country approximates the numerous and varied carrier and customer relationships that exist in the United States. The rapidly expanding multiplicity of wireless and wireline carriers in the U.S. necessarily means that CPP implementation will entail a degree of additional technical and billing complexity that simply is not present elsewhere in the world.

Leap believes that the applicability of the European and Latin American model is too tenuous to warrant aggressive action by the Commission to promote CPP in the United States. CPP has developed in countries with a history and tradition of incremental charges for local calling. In the United States, market forces are now promoting the emergence and growth of "bucket plans" and unlimited calling, whereby consumers avoid any incremental charges. Increasingly in the United States, the question is not *who* should pay, but whether *anyone* should

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<sup>10</sup> "CPP Lost Appeal" at 18 (quoting Ira Gorelick, GTE).

<sup>11</sup> Carolyn Hirschman, "Who Pays for What?: CPP Provision Would Redistribute Charges for Wireless Usage," *Telephony* (Monday, August 16, 1999), *available at* 1999 WL 11171985.

pay for an incoming call. Leap does not believe it wise as policy matter for the Commission to interfere with this trend through aggressive over-implementation of CPP.

### **III. THE COMMISSION MUST NOT JEOPARDIZE CURRENT WIRELESS INNOVATION AND STILL-DEVELOPING SERVICE MODELS**

One of the Commission's stated goals in this proceeding is to promote competition in local telephony.<sup>12</sup> Leap agrees that wireless technology offers a major source of competition for the incumbent LECs. Indeed, wireless systems increasingly market themselves as an alternative to wireline service.<sup>13</sup> In order to compete, a service plan aimed at offering a viable substitute to landline service should offer the same value and convenience as an ILEC local service plan, *i.e.*, flat-rate, unlimited or nearly unlimited calling.<sup>14</sup>

Cricket's flat rated "around town phone" service is one of the most vivid examples of how wireless carriers are providing competition in local telephony. Other examples include large "bucket plans" that include as much airtime as a customer would expect to use, and plans that include free incoming minutes.<sup>15</sup> These plans are similar in that they allow users to call or receive calls with no incremental usage charges, effectively positioning themselves as an alternative to wireline telephony.

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<sup>12</sup> Notice at ¶ 20 ("to provide a near-term competitive alternative to incumbent local exchange carriers (ILECs) for residential customers.")

<sup>13</sup> See, *e.g.*, *Fourth CMRS Report* at 12-14; see also, *e.g.*, Karissa Todd, "The Road to Local Competition," *Wireless Review* (November 30, 1998).

<sup>14</sup> As one party to the Commission's earlier Notice of Inquiry stated, "the solution [to providing ILEC competition] could be as easy as lowering and simplifying the Byzantine rate structure that characterizes wireless service today." Joint Reply Comments of the Association of College and University Telecommunications Administrators and the Ad Hoc Telecommunications Users Committee at 5. Leap agrees, and indeed, this is the essence of the Cricket service model.

<sup>15</sup> See generally *Fourth CMRS Report* at 12-14.



The Commission must take care not to upset the market forces generating such plans, which may one day provide true competition in local telephony.<sup>16</sup> From the U.S. consumer's perspective, a wireless service model that offers the prospect of true local competition will not be premised on whether it is the called or calling party that is forced to bear the cost of completing a wireless telephone call. Wireless local competition will instead arise from a model where, from the user's perspective, *no one* pays, much like using a landline phone for local calls. CPP must not be implemented if it unintentionally impedes other favorable developments, such as flat-rated offerings, in the CMRS marketplace<sup>17</sup>

In addition, CPP also has very troubling potential ramifications and costs for smaller carriers, who may not have the economies of scale to cope with elaborate CPP notification and billing requirements or the resources to upgrade their networks. Leap accordingly urges the Commission to proceed with caution before authorizing CPP on a wide-scale basis, and to study with care its potential impact on CMRS and local competition, as well as smaller carriers and consumers.

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<sup>16</sup> Several commentors to the NOI pointed out that Commission regulation could “distort the results of such market-driven developments.” Reply Comments of United States Telephone Ass’n at 2. *See also, e.g.*, Comments AT&T Wireless Services at 2; BellSouth Corp. at 3.

<sup>17</sup> For example, “bucket plan” subscribers in Mexico were harmed by that country’s implementation of CPP, as they found themselves with extra minutes that they were contractually obligated to buy. The Strategis Group, *Calling Party Pays: Case Study Analysis* (1999), at 48. (copy filed with FCC by PCIA).

**A. The Commission's Proposed Nationwide Notification System Is Problematic**

The Commission's proposed CPP rules could create significant problems for emerging wireless carriers.<sup>18</sup> Specifically, the Commission's proposed nationwide notification system may cause problems for a flat-rated service such as Cricket, which is intended to provide residential and business consumers with simple, predictable, "no hassles, no surprises" wireless service. People will subscribe to Cricket to avoid having to worry about (and pay for) incremental usage charges. The Commission's proposed implementation of CPP should not jeopardize this simplicity, which Leap believes is a fundamental component to the creation of a landline substitute.

In this regard, the Commission's proposed nationwide CPP notification system, if it is mandatory, has the potential to inject an entirely new complication into wireless usage and billing, at least with respect to CMRS-CMRS calls. A Cricket subscriber who has signed up with the understanding that she will receive unlimited local calling for a fixed fee rate is highly likely to be surprised and confused by the notification that she will incur an additional per-minute airtime charge for a local call to another wireless phone operated by a carrier offering CPP. Inevitably, there will be misunderstandings and disputes. Even in a best-case scenario, with sophisticated customers who understand and knowingly pay CPP charges, the addition of per-minute CPP charges could destroy the simplicity and predictability that Cricket subscribers desire. And the complexity of notification requirements could have the anomalous result of suppressing new wireless usage.

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<sup>18</sup> Joel Palmer, "Wireless Service Made More Affordable," 15 *Business Record* 33 at 10 (August 16, 1999) ("It's going to be difficult. It's going to be expensive. It will be challenging.") (statement of Brendan Phelps, Communication Management Services).

Moreover, the Commission's proposed nationwide CPP notification program does not appear to allow wireless carriers to opt out and tailor their service plans to customer desires. For example, carriers might want to include all outgoing minutes—including CPP minutes—in their bucket or unlimited plans. Or they might want to include a limited amount of “free” CPP calling as part of a bucket plan. Even if carriers find and cater to a demand for “included” CPP calling, the proposed notification system will confuse customers who receive two conflicting messages: one from their own carrier (correctly) telling them that they will not have to pay, and one from the CPP notification system (incorrectly) telling them that they will have to pay. By requiring participation in the national notification system, the Commission's proposal introduces an additional complication into wireless billing, and prevents carriers and subscribers from contracting around that complication in accordance with customer demand.<sup>19</sup>

Leap has no objection to the Commission promulgating a uniform notification standard with respect to the *content* of the notice that would be utilized by those carriers who choose to offer CPP *and* that have not otherwise made arrangements, *e.g.* through negotiated interconnection arrangements with other carriers, to absorb the additional cost without passing it on directly to subscribers. But the Commission should not mandate a nationwide notification program that diminishes wireless carriers' flexibility to offer the most efficient and attractive service plans to their customers.

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<sup>19</sup> Given the many problems stemming from the Commission's proposed notification system, any such system should certainly be tested on a limited scale *before* it is deployed nationally. The CPP (and notification system) implementation discussed in the *Notice* is inadequate to assess the proposed notification system, for no preexisting system contains the specific safeguards proposed by the Commission. Rather, a 12- to 18-month localized test should be conducted of the exact notification system proposed to be implemented nationally, in order to determine whether that system is workable or would require additional modification.

**B. Further CPP Implementation Could Have A Significant Adverse Affect on Small and Emerging Wireless Competitors**

Leap is particularly concerned about the effect of CPP implementation on small and emerging wireless competitors to incumbent wireless and wireline providers. Given the vibrant state of CMRS competition, the costs of overlaying CPP on the wireless marketplace will only widen the gap between emerging competitors and incumbent providers of wireless and wireline telecommunications services. Although the problems of caller notification and billing complexity may be ones that the marketplace can sort out in time, startup and smaller carriers may simply not be capable of bearing the database and network upgrade costs, the costs of CPP billing infrastructure, or complicated settlement processes.

Indeed, CPP could have the effect of driving customers more deeply into the grasp of larger, more entrenched providers with negative consequences for such subscribers. Large wireless carriers and/or those with ILEC affiliations, by virtue of the scale of their networks, naturally will have more opportunities to terminate wireless and wireline calls than smaller carriers. If these carriers implement CPP, but also have the ability to "waive" CPP for calls made within their own family of networks, smaller carriers' ability to compete could be severely impeded. A smaller carrier may be able to offer a better rate plan or higher quality service, for example, to a "soccer mom" using her wireless phone for local calling, even while her husband subscribes to a larger national carrier offering a "one-rate" type plan for business users. If the larger carrier introduces CPP, the soccer mom must now pay extra to complete a call to her husband. In the end, she is much more likely to switch to the same carrier as her husband in order to avoid CPP charges, even if the option offered by the larger carrier in her service niche is inferior to her previous service. CPP thus could anomalously be a barrier to entry for small carrier innovation as well as diminish competitive benefits to consumers.

Once again, if the competitive and consumer benefits of aggressive CPP implementation were clearer, such risks to smaller carriers and their customers might be worth bearing. But as it stands today, emerging providers, including Leap, are sources of wireless innovation that should not be stifled absent significant countervailing benefits from CPP. The record to date is largely devoid of evidence on this point.

**C. Any Final CPP Rules Should Be Adopted Only After Adequate Data Is Collected From CPP Market Trials**

An unusual feature of this rulemaking proceeding is the dearth of actual data with respect to actual CPP operations and market conditions. The few and extremely limited market trials of CPP to date in the United States cannot be relied upon to support the Commission's proposed regulatory action. Those experiments have been lackluster, and have attracted neither the subscribership nor the public interest to suggest that CPP is an attractive or viable service.<sup>20</sup> BellSouth's experience with sixty customers in Hawaii simply cannot provide the basis for any rational decisionmaking.<sup>21</sup> Moreover, as mentioned, the experience of CPP implementation in Europe and Latin America should not inform CPP implementation in the United States. Those countries—with fewer telecommunications providers (and therefore simpler CPP billing arrangements), and consumers accustomed to metered local service—are fundamentally different from the market. Without any meaningful data on customer response to and confusion from CPP, any federal CPP rules would rely largely upon speculation and conjecture.

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<sup>20</sup> See, e.g., NOI Comments of GTE Service Corporation at 8 ("The service in Hawaii has never been particularly successful").

<sup>21</sup> "Who Pays for What?," 1999 WL 11171985.

Several commenters already have urged the Commission to provide for limited market trials of CPP prior to the promulgation of any final CPP rules.<sup>22</sup> Leap agrees with this position if the Commission decides to take any action with respect to CPP implementation. If the Commission moves forward, it should, at a minimum, provide for market trials using a close approximation of the rules the Commission actually proposes to adopt. Such trial markets should feature multiple service providers, in order to approximate the implementation and coordination difficulties likely to be encountered. The real-world data that would be gained by such trials is vital to any fair assessment of the likely impact of the Commission's final rules on the CMRS marketplace.

#### **IV. THE COMMISSION HAS CORRECTLY DECIDED TO ABSTAIN FROM REGULATING CMRS RATES FOR INCOMING CPP CALLS**

The Notice correctly observes that there is “no evidence to suggest that CPP pricing will be problematic.”<sup>23</sup> As the Commission observed in its *Fourth Report*, there is vigorous competition among wireless providers, which now include multiple cellular, PCS and digital SMR carriers licensed on a local, regional and nationwide basis.<sup>24</sup> And as competition increases, rates decrease.<sup>25</sup> There is no market failure that justifies Commission or state regulation of CPP rates at this juncture.

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<sup>22</sup> See, e.g., Comments of the Connecticut Department of Public Utility Control at 3; NOI Reply Comments of BellSouth at 8.

<sup>23</sup> Notice at ¶ 54.

<sup>24</sup> *Fourth CMRS Report* at 6.

<sup>25</sup> *Id.* at 6-7.

## **V. CPP-RELATED BILLING AND COLLECTION SERVICES SHOULD BE OFFERED BY LECs ON A NON-DISCRIMINATORY BASIS**

Because Leap generally is in favor of the Commission allowing the wireless marketplace to determine whether CPP will become widely available with minimal Commission involvement, Leap also does not believe that it is necessary to impose regulations requiring LECs to provide CPP-related billing and collection services, at least until there is evidence that there is a strong market demand for the CPP service. As the *Notice* points out, the Commission historically has declined to regulate billing and collection services “unless regulation is needed to protect competition.”<sup>26</sup>

Nevertheless, Leap also is concerned that incumbent LECs may have the ability to discriminate in favor of their wireless affiliates in the provision of billing and collection services with respect to the offering of CPP. This could be a very problematic development for emerging wireless competitors that may not possess the economies of scale and resources to develop CPP billing and collection capabilities independently. Thus, Leap believes that a minimum nondiscrimination requirement should be placed on LECs to the extent they choose to offer CPP billing and collection services to wireless carriers. Such services must be offered at fair, non-discriminatory rates, terms and conditions to all wireless carriers seeking to utilize such services, on no less favorable terms to competitors than the LEC offers its own wireless affiliates if they are present in the market.

## **VI. CONCLUSION**

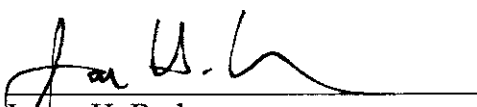
With respect to the general notion of introducing CPP into the U.S. wireless marketplace to stimulate wireless growth, Leap sees no reason to “fix” what is not broken. There

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<sup>26</sup> *Notice* at ¶ 59.

simply is no demand for CPP in the CMRS marketplace today, and no need to take further action to promote the service. Furthermore, the Commission's proposed regulatory actions to implement CPP could impose additional costs on wireless carriers and/or consumers, and could stifle the free development of service plans best calculated to bring local competition. Leap therefore urges the Commission to proceed cautiously, and to avoid taking precipitous action to introduce a service to the public for which there is little demand, but a potentially significant public interest cost.

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A handwritten signature in black ink, reading "Rochelle L. Pearson". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Rochelle L. Pearson